## SOO BEE & CO., LTD. v. REX.

[App. Civ. Juris. (Sir Charles Murray-Aynsley, C.J.) May 28, 1952]

[Singapore — Magistrate's Appeal No. 134 of 1951]

*Municipal Ordinance (Cap. 133), ss. 12(3) and (4), 144, 388 and 399 — Erecting in rural area a building the plans of which had not been approved by the Rural Board — Constitution of the Rural Board.*

The appellant Company was convicted under section 144 of the Municipal Ordinance for erecting a building in the rural area the plans of which had not been approved by the Rural Board. It was contended that the plans were rejected because they did not conform to certain by-laws and as these by-laws were invalid no offence had been committed. It was also contended that the prosecution was not properly instituted, in that it was not authorised in the manner prescribed by section 388 of the Municipal Ordinance.

Held, that (1) if the Rural Board had refused to approve plans for some reason which is bad in law, the person aggrieved has a remedy by way of mandamus or otherwise. If he proceeded to build without approval he had committed an offence; (2) sub-sections (3) and (4) of section 12 of the Municipal Ordinance are applicable to the Rural Board and although there was no legislation which created the office of Deputy Chairman of the Rural Board, it was clearly the intention to invest the Deputy Chairman with powers described in section 12(4).

MAGISTRATE'S APPEAL.

*T. W. Ong* for the appellant.

*L. Rayner* for the Crown.

*Cur. Adv. Vult.*

**Sir Charles Murray-Aynsley, C.J.** : — In this case the appellant Company was convicted under section 144 of the Municipal Ordinance (Cap. 133) for erecting in the rural area a building the plans of which had not been approved by the Rural Board. It was admitted that the Company had proceeded to erect a smoke house the plans of which had previously been submitted to, and rejected by the Board. In the Court below and in grounds of appeal it was contended that the plans were rejected because they did not conform to certain by-laws and as these by-laws were invalid no offence had been committed. This was clearly not the law. It may be that, if the Board refuses to approve plans for some reason which is bad in law, the person aggrieved has a remedy by way of mandamus or otherwise. If he proceeds to build without approval he commits an offence.

There were, however, two subsidiary points. First it was contended that there was no evidence that the building was in the rural area. As the manager of the appellant Company gave evidence to the effect that he had submitted plans to the Board there cannot be anything in this contention.

There was a further point that the prosecution was not properly instituted, in that it was not authorized in the manner prescribed by section 388. Here the prosecution was launched by a complaint made by a gentleman described as a Building Surveyor, an officer of the Board. It was signed by this gentleman and also by a gentleman who has been appointed Deputy Chairman of the Board and recited the fact that the prosecution had been directed by the Chairman. The direction of the Chairman was not produced at the hearing.

I am not at all satisfied that any sanction is required in these cases. The general rule is that any person can prosecute in non-seizable cases. I shall assume, for purposes of argument, that authority under section 388 is necessary.

If that is the case, a difficulty arises in this way. The Board is constituted under section 399 of the Municipal Ordinance which gives the Governor power to constitute a Rural Board and to apply and adapt the provisions of the Ordinance for the purpose. This was done and various offices were created but not, apparently, an office of Deputy Chairman. Sub-sections (3) and (4) of section 12 of the Municipal Ordinance were, however, applied to the Board. This empowers the Governor in Council to appoint a Deputy President and defines his powers: "(4) The Deputy President shall, subject to the directions of the President, have all the powers of the President....."

On September 8, 1950, (Gazette Notification No. 2023) acting under powers conferred by section 12 of the Ordinance, the Governor appointed Mr. Burlock by name to be Deputy Chairman of the Rural Board. Although there was no legislation which created the office of Deputy Chairman, it was clearly the intention to invest Mr. Burlock with the powers described in section 12(4). I think, therefore, that Mr. Burlock, whose signature appears on the complaint, had authority to direct the prosecution under section 388.

The appeal is, therefore, dismissed.

*Appeal dismissed.*

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## NG ENG KANG v. R. SITHARAM & ANOR.

[Court of Appeal (Sir Charles Murray-Aynsley, C.J. (Singapore), Mathew, C.J. (F.M.) and Storr, J.) May 25, 1952]

[Singapore — Civil Appeal No. 4 of 1952]

*Landlord and tenant — Protection of sub-tenant — Control of Rent Ordinance, 1947 — Inferior Court exceeding its jurisdiction — Writ of Prerogative.*

If there is no prohibition at the time of sub-letting the sub-tenant is entitled to protection by section 15 of the Control of Rent Ordinance, 1947. The trial Court

must by the same section 15 declare whether the judgment or order is to be enforced against the sub-tenant or not. No Court should declare any judgment enforceable against a sub-tenant unless it has reason to be satisfied that he is not entitled to protection. Prerogative writs may be invoked when a person is threatened by an inferior Court acting in excess of jurisdiction.

COURT OF APPEAL.

*H. R. Wilson* for the plaintiff-respondent.

*H. S. Godwin* for the defendant-appellants.

*Cur. Adv. Vult.*

The Judgment of the Court was delivered by Sir Charles Murray-Aynsley, C.J., (Singapore), with which Mathew, C.J., (F.M.), and Storr, J., concurred.

**Sir Charles Murray-Aynsley, C.J.** : — In this case certain premises were let in about the year 1945. In October, 1946, part of the premises were sub-let.

In September, 1947, the tenant signed an agreement with the executors of the landlord (the tenant says that he did so in ignorance of the contents) by which sub-letting was forbidden without leave. At the time of the sub-letting there was no prohibition. Later the executors of the landlord obtained possession against the tenant on account of non-payment of rent. It appears to me clear that the sub-tenant was entitled to protection by section 15 of Ordinance 25 of 1947. The prohibition must exist, I think, at the time of sub-letting.

The sub-tenant was not a party to the proceedings against the tenant. In spite of this the learned District Judge made the order for possession enforceable against the sub-tenants, if any. The Court must by the same section 15 declare whether the judgment or order is to be enforced against sub-tenants or not. I think that the Court should not declare any judgment enforceable against sub-tenants unless it has reason to be satisfied that they are not entitled to protection. I do not see how any Court can be so satisfied without hearing them. In the circumstances the Court below was wrong in declaring the judgment or order enforceable against sub-tenants.

The difficulty in this case was one of procedure. The sub-tenant was not a party to the proceedings; he could not therefore appeal. Unless he did something he was liable to be ejected. It is naturally difficult to find authority in a situation like the present one. It does appear, however, that the prerogative writs may be invoked when a person is threatened by an inferior Court acting in excess of jurisdiction.

In the circumstances I am not prepared to say that the learned Judge was wrong. I think that the appeal should be dismissed with costs. Deposit to be paid out to the respondent.

*Appeal dismissed.*

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## PAIMAN BIN DOYO v. PUBLIC PROSECUTOR.

[Court of Appeal (Mathew, C.J. (F.M.), Sir Charles Murray-Aynsley, C.J. (Singapore) and Wilson, J.) June 9, 1952]

[Kuala Lumpur — Criminal Appeal No. 21 of 1952]

*Criminal Procedure — Murder — Summing up — Evidence of cause of death — Points to be put to doctor — Unsatisfactory summing up — Misdirection — Penal Code, s. 302.*

An example of a case of unsatisfactory summing up and misdirection.

CRIMINAL APPEAL.

*K. C. Chia* for the appellant.

*B. Sheldon* (D.P.P.) for the respondent.

*Cur. Adv. Vult.*

The judgment of the Court of Appeal was delivered by :—

**Mathew, C.J.** : — The appellant was convicted in the High Court of the murder of one Mingan bin Majikon, contrary to section 302 of the Penal Code, and was sentenced to death. On the evidence of the prosecution witnesses it was established that on the night of the 2nd March, 1951, the appellant, in the presence of Rosdi, Ayob, Dakil and Waksimin, said that he was going to kill Mingan. According to Waksimin the appellant only threatened to beat Mingan. On the morning of the 3rd March, 1951, the deceased left Ulu Yam Estate on his bicycle. He was accompanied by Sa'ing (alias Sawabi) on another bicycle. On the estate road they were stopped by the appellant. Sa'ing's account of what happened was as follows. The appellant threw sand on Mingan's face. Mingan then ran away leaving his bicycle on the road. The appellant drew a knife and chased Mingan. They vanished from view behind some bushes, and then Sa'ing heard the deceased cry "I am dying". Sa'ing remounted his bicycle and went down the road in the direction of Rawang. Later that day the appellant returned to Ulu Yam Estate and told Rosdi that he had succeeded in killing Mingan. Esah was present but could not understand the conversation that took place as the appellant and Rosdi spoke in Javanese.